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Paul Nitze Takes Stand in CBS Trial

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Paul N. Nitze, a former Deputy Secretary of Defense, testified yesterday that he told the producer of a disputed CBS documentary that he did not believe Gen. William C. Westmoreland would have engaged in a conspiracy to deceive his superiors about enemy troop strength.

Mr. Nitze, who is now the chief United States negotiator with the Soviet Union in talks on limitation of intermediate-range nuclear weapons, appeared in Federal District Court in Manhattan as the 15th witness for General Westmoreland in his \$120 million libel suit against CBS.

The suit stems from a January 1982 CBS Reports documentary titled "The Uncounted Enemy: A Vietnam Deception." The broadcast, produced by George Crile, alleged a "conspiracy" at the "highest levels" of military intelligence to "suppress and alter critical intelligence on the enemy" in the year before the Tet offensive of January 1968.

The purpose of the "conspiracy," according to the documentary, was to minimize North Vietnamese and Vietcong strength to show that America was winning the war in Vietnam. It said that General Westmoreland, the commander of American forces in Vietnam from 1964 to 1968, imposed an "arbitrary ceiling" of 300,000 on reports of enemy size, partly by dropping the Vietcong's self-defense forces from the official listing of enemy strength known as the order of battle.

'Difficult to Be Certain'

Mr. Nitze — who was Secretary of the Navy between 1963 and June 1967 and Deputy Secretary of Defense from then until January 1969 — testified yesterday that he had told Mr. Crile in August 1981 that "it was extremely difficult to be certain about intelligence estimates in a war of that complexity."

He also recalled telling the producer that he had known General Westmoreland since the general was superintendent of the United States Military Academy at West Point between 1960 and 1963, and that he was "confident" the general "could not have been engaged in any kind of operation to deceive the President or his advisers in Washington."

Because of a scheduling conflict, General Westmoreland's testimony was interrupted to permit Mr. Nitze to take the stand. However, the general, who began giving evidence on Nov. 15, completed his testimony later in the day.

David Boies, the lawyer for CBS, ended his cross-examination of General Westmoreland by pointing to an exchange of cables in April and May 1968 between the witness and Gen. Earle Wheeler, chairman of the Joint Chiefs of Staff.

The cables showed that after the Tet offensive, when the Central Intelligence Agency wanted to double the estimate of enemy strength to a total ranging from 480,000 to 615,000, General Westmoreland continued to argue that it was "not possible" to accurately count the Vietcong's self-defense forces.

In one cable, General Westmoreland mentioned that a Colonel Dac — who he said yesterday was then the highest-ranking defector from the North Vietnamese Army — had told American intelligence officers that he "did not believe that anyone in the VC hierarchy could provide a good estimate of the number of self-defense personnel."

But the general wrote General Wheeler that a figure of 150,000 for the self-defense forces was "harmless enough" in the context of relatively low estimates agreed on by the intelligence community in late 1967.

Mr. Boies — apparently to show that CBS may not have all the documents it needs for its defense — also introduced a cable that General Westmoreland sent General Wheeler on April 27, 1968, in which he said he had "destroyed all copies" of a previous message "and request that you do likewise."

The general testified that he did not know why the April 27 cable had been sent or what earlier message it referred to.

At another stage, General Westmoreland appeared to be embarrassed by a discrepancy between testimony he had given on Nov. 21 and statements he was now giving.

It began when Dan M. Burt, the general's lawyer, sought to introduce a May 19, 1967, memorandum found in Department of the Army files only last week — a document that, unless General Westmoreland could identify it, might not be received into evidence.

The two-page memorandum lent support to the general's often-repeated contention that he wanted the self-defense and other enemy "irregular" forces analyzed in 1967 to identify which were armed, and that he had not

secreted a study then that showed the size of these forces to be higher than previously thought.

When General Westmoreland told the jury yesterday that he ordinarily read memorandums of this kind when he was the commander in Vietnam, Mr. Boies noted that, on Nov. 21, he testified that he did not read them regularly. "I didn't read documents or memoranda that were not necessary for the conduct of my business," the general had said.

Now, General Westmoreland said, "I was definitely in error" on Nov. 21. "I didn't concentrate on the importance of the question."

Eventually, Judge Pierre N. Leval allowed introduction of the memorandum, which contained a scrawled note that General Westmoreland said was in his handwriting.

Mr. Nitze testified that he knew Mr. Crile because the producer had been married to Anne Patten, the daughter of William Patten, a diplomat whom Mr. Nitze had known since college at Harvard. Mr. Crile is now divorced from Miss Patten, who is also the daughter of Susan Mary Alsop.

In August 1981, the former Defense Department official said in a low, measured voice, Mr. Crile came to see him at his summer home in Northeast Harbor, Me., and told him of the project he was then in the midst of preparing for CBS. Mr. Nitze said he could not recall the conversation "verbatim" but remembered its substance.

"My recollection is that he described it as a program in which he would demonstrate that there was great uncertainty, in fact, error in the figures which had been prepared as to enemy strength in Vietnam," Mr. Nitze said. "And that he had evidence that these figures, in fact, had been put together in a way in which, in a conspiracy to in-

fluence or deceive the President and/or his advisers in Washington."

Mr. Nitze said he told Mr. Crile that he wasn't surprised that people had differed sharply over enemy strength estimates — in a war that he recalled saying was part conventional, part terrorist, part psychological and part political. But he advised Mr. Crile, he added, that he had "deep knowledge" of General Westmoreland's character and he didn't believe the general could have been associated with the sort of conspiracy the producer was talking about.

On cross-examination, Mr. Boies tried to show that Mr. Nitze's memory of the meeting with Mr. Crile was so "vague" that, during his deposition only a month ago, Mr. Nitze was uncertain of where it had taken place.

Mr. Nitze said he had been uncertain not of the site of the meeting, but what had initiated it.

Mr. Boies, in an effort to show the value of the self-defense forces to the Vietcong, noted that Mr. Nitze had said in his deposition that those units were responsible for terrorism. And now Mr. Nitze was also saying the units defended their villages against American troops.

But Mr. Nitze said he was uncertain in 1967, as now, what importance to attach to forces that "could be one thing one day" and "the next day be something else."

During the war, he said, it was difficult to "make a reasonable estimate as to what those forces were." But, in terms of "military capability," he said, to have added their number to the enemy's regular forces was to have added "flies" to "elephants."

"When you aggregate elephants and flies," he remarked, "you get nonsense."